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Held at Headquarters, New York,
on Friday, 5 June 1998, at 3 p.m.

Chairman: Mr. MAZILU (Romania)

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The meeting was called to order at 3.10 p.m.

PRIVATELY FINANCED INFRASTRUCTURE PROJECTS (continued) (A/CN.9/444/Add.5)

1. The CHAIRMAN invited the Commission to resume its consideration of draft chapter IV of the legislative guide on privately financed infrastructure projects (A/CN.9/444/Add.5).

Paragraphs 2-6 (continued)

2. Mr. AL-ZAID (Observer for Kuwait) said that recommendation 2 should perhaps include a reference to parliamentary procedures. In his country, authorization by the legislature was necessary for major projects. The content of recommendation 14 on duration should be referred to under general considerations (section A). The recommendation should also mention the conclusion of the project agreement.

Paragraphs 8-21

3. Mr. TELL (France) proposed substituting "effective" for "expeditious" in recommendation 3 and its corresponding paragraph 11. He said that in his country expeditious proceedings would lead to a decision on expropriation in one hour; he did not believe that that was the intent of the provision. The editing change would also tone down the disagreeable reference to court proceedings. Hundreds of people could be affected by expropriations connected with large-scale projects; their rights must be protected.

4. Mr. WALLACE (United States of America) said that the term "expropriation" was inappropriate, as it implied expropriation of foreign investments. In the American system, the terms "eminent domain" or "condemnation" were used. Compensation of the landowner was an issue that must be treated very carefully (for example, in para. 16).

5. The second sentence in paragraph 10 struck him as odd. It would seem that if a Government decided to proceed with a project, it would be prepared to make the land available to the project company. In paragraph 15, easements might be more applicable to the transmission of power rather than power generation. Referring to recommendation 5 and the second sentence of paragraph 21, he said that investors would need to be reassured about the duration of exclusivity arrangements or the possibility of obtaining them at a later date. Rather than relying on "changes of circumstances", the draft agreement should encourage the adoption of legislation permitting contractual arrangements in that regard.

6. Mr. RESTREPO-URIBE (Colombia), responding to one of the points raised by the representative of the United States, said that there was no alternative term for the equivalent of "expropriation" in Spanish and failure to use it would give rise to confusion.

7. Mr. GUISLAIN (Observer for the World Bank) drew Commission members' attention to the World Bank publication entitled "Concessions for

infrastructure: A guide to their design and award", which he could provide them.

8. Referring to paragraph 10 of the text before the Commission, he said that the World Bank, placed a great deal of emphasis on the vital and sensitive issue of resettlement in expropriation proceedings; that went beyond the dispossession of land and might even require a government to provide alternative housing to uprooted persons. He agreed with the United States representative that the reference to power generation in paragraph 15 might be erroneous and suggested the broader term "power sector".

9. Exclusivity was a major policy issue that should be determined by legislation rather than by negotiations with the project company. Consumers, users and competitors must also be parties to the debate. Some legal systems placed a time limit, for example, four or five years, on exclusivity or designated certain sectors that could be opened up to competition or concessions on an exceptional basis. In his view, the scope of exclusivity should be as narrow as possible and the time limit as short as possible. The recommendation on exclusivity and its accompanying paragraphs should include a reference to the fuller discussion of the topic in chapter II (A/CN.9/444/Add.3).

10. The statement in the final sentence of paragraph 20 was true; however, such concerns were normally taken into account in the initial design of a project. The existence of parallel roads was not uncommon; he was therefore surprised to see the question discussed in that context.

11. Mr. CHOUKRI (Observer for Morocco) suggested specifying, in paragraph 14, that expropriation was in the public interest. He said that would make the procedure more justifiable and would also avoid confusion with other procedures, such as confiscation, which was punitive and did not involve compensation.

12. Ms. GUREYEVA (Russian Federation) requested the secretariat to clarify, in connection with the first sentence of paragraph 17, who was given the right to operate the infrastructure as well as the meaning of "competing infrastructure". She wondered whether it was another project of the organization. The words "competing infrastructure" in the first sentence of paragraph 19 appeared to indicate that some other company or organization could carry out a parallel project. That wording gave rise to confusion as to whose rights were involved and under what conditions they could be exercised. Clarification would be appreciated.

13. Mr. ESTRELLA FARIA (International Trade Law Branch) responding to the request for clarification made by the representative of the Russian Federation, said that paragraph 17 set forth the right to operate the infrastructure, which was in itself exclusive. Where another infrastructure operated parallel to it - for example, in the case of a toll road and another parallel road - each operator had exclusive rights with respect to its own operation. The question, however, was to what extent the first infrastructure was affected by the parallel infrastructure.

14. Ms. GUREYEVA (Russian Federation) also questioned the appropriateness of the term "enabling legislation" (para. 18), which was not recognized in her country's legal system. She said that a more neutral term was needed.

15. Ms. FOLLIOT (France) said that her delegation felt strongly about retaining the term "expropriation", which, under French law, was perfectly adapted to the context: it involved the legal disposition of property, for compensation, in the public interest. The question of exclusivity was difficult inasmuch as it implied the possibility that the contractual conditions of implementation could be amended.

16. Mr. KOVAR (United States of America) said that the term "expropriation" was clearly unsuitable in English. In the United States legal system, the terms "eminent domain" or "condemnation proceedings" reflected the concept of taking property for a public purpose, providing due process in some judicial form, and paying compensation. He believed that that concept was recognized in international law and in all legal systems.

17. The term "expropriation", on the other hand, had relatively negative connotations in English. In the draft agreement, "expropriation" was sometimes used in a context that implied that due process of law or compensation were not necessary. For example, the last sentence of paragraph 10 seemed to indicate that expropriation did not involve a purchase of land. Similarly, compensation would unquestionably (and not "might") be an obligation if the use of property by its owner was substantially hindered (para. 16). He agreed with the representative of France that recommendation 3 and paragraph 11 should not refer to "expeditious" proceedings, which could be interpreted to mean that compensation was not necessary in the interest of speed.

18. Ms. ALLEN (United Kingdom) strongly supported the representative of the United States with regard to the usage of the term "expropriation". The term had negative connotations in English and did suggest that no compensation was necessary. "Eminent domain", however, had no meaning in her country's legal system, which employed the term "compulsory purchase" in such cases.

19. Mr. RENGER (Germany) said that the choice of terms should not be determined by the usage in one State alone. In Germany, there could be no expropriation without compensation. In the final sentence of paragraph 10, he understood the concept of purchase, as a legal requirement, to be implicit in the term "expropriation".

20. Mr. LALLIOT (France) proposed that, since Commission members seemed to agree on the concept in substance, the secretariat should find an appropriate generic term for use in the draft agreement.

21. Ms. MUSOLINO (Australia) said that the term "expropriation" was commonly used in her country in the context of bilateral investment treaties. She suggested using the phrase "expropriation against just compensation".

22. Ms. PIAGGI DE VANOSSI (Argentina) agreed with the representative of Germany, and said that her delegation would not oppose changing the terminology.

In that regard, she believed the Australian proposal would dispel all remaining doubts.

23. Mr. KOVAR (United States of America) reiterated that "expropriation" had a negative connotation in some Anglo-Saxon legal systems. Since it was often interpreted as "the taking of property of a foreign national by a Government", and that was not the meaning those particular paragraphs sought to convey, the expression "compulsory purchase", as used in the United Kingdom legal system, would be an apt replacement. Alternatively, the Commission could pursue the French proposal of asking the secretariat to substitute a generic term for "expropriation".

Paragraphs 22-34

24. Ms. ALLEN (United Kingdom) said that the idea of authorization of the host Government to award projects to foreign companies, as stated in the second sentence of recommendation 6, had not been reflected in either paragraphs 26 or 27.

25. She also pointed out that there was no recommendation corresponding to paragraph 28. As the timing of the establishment of a project company was a fairly relevant issue, she hoped it would be possible to formulate a recommendation on that part of the text.

26. Mr. RENGER (Germany), referring to the first sentence of paragraph 22, said that the legal status of a concessionaire should be established before the conclusion of a project agreement, and was not an issue to be negotiated in the agreement itself.

27. Mr. WALLACE (United States of America) said that the comment made by the representative of the United Kingdom on the second sentence of recommendation 6, related to a reference to foreign participants made at an earlier meeting. He presumed that foreign participants would be treated on an equal footing with their domestic counterparts.

28. Turning to the establishment of legal status, he said that the creation of independent legal entities was common practice, and was sometimes required by many Governments. Among other reasons, sponsors or investors often preferred to create a separate legal entity in order to protect their limited liability.

29. With respect to paragraph 27, he said investors might make indemnity arrangements among themselves, but that was an aspect which would not necessarily fall within the purview of the host Government.

30. Debt-equity ratio was, in his opinion, more important than the notion of "minimum capital", as cited in paragraph 30. For their own protection, lenders would insist on equity, otherwise their projects might be too highly leveraged.

31. He believed investors would object to the implications of the last sentence of paragraph 32, as they usually wished to have the freedom to structure their companies as they saw fit. Similarly, the issue of a Government as a "privileged shareholder" and government involvement in the voting structure of

companies, raised in the third sentence of paragraph 33, was likely to meet some resistance from investors and lenders, particularly from those which were not accustomed to dealing with governments in commercial operations.

32. It might be advisable to limit the principle of "effective control", within the meaning of paragraph 34, since investors or principal shareholders might not understand why an equipment supplier or subordinate member of a group could not be replaced without government approval.

33. Mr. RESTREPO-URIBE (Colombia), commenting on the relationship between the project agreement and the legal status of concessionaires, said that the content of the project agreement would define and specify the substance, scope and conditions of the powers and attributes granted by the applicable legal regime.

34. Paragraphs 22 and 23 should be redrafted to indicate that concessionaires were not required to be members of consortia. In principle, it was possible that a concessionaire could be a single entity or a number of legal persons forming an association. However, from his own experience, it was more usual for a legal entity to submit its candidature as a member of a consortium, simply because it would be better equipped to combine technical expertise with the banking and investment components which were crucial to the implementation of projects.

35. He pointed out that the term "accionista" (shareholder) was used throughout the text, but he preferred the concept of "participación" (participation), or an explanation that reference was being made to "socios" (members) or shares of interest.

36. Mr. LALLIOT (France) agreed that the issue of concessionaires should be clarified. He also shared the view stated by the representative of Germany on paragraph 22. The purpose of the project agreement was certainly not to establish the legal status of the concessionaire, which should be settled in advance, either at the pre-selection phase or by domestic law.

37. Mr. GUISLAIN (Observer for the World Bank), also commenting on paragraph 22, said that his own organization would not agree to lend to a consortium which had not been incorporated and, in addition, a shareholders' agreement would normally be requested as documentation.

38. He suggested that the second sentence of recommendation 6 should be deleted.

39. The issue of prescribing a "fixed sum" as minimum capital (para. 29) would have to be considered in a broader context, along with lenders, overall equity-debt ratio, and other elements that could reassure the awarding authority of the sponsors' commitment to the project. Focusing on one single aspect would not be entirely useful.

40. Although the idea of the Government's role as "privileged shareholder" (para. 33) was not advisable, if such reference were to remain in the document, the matter should be treated as a veto held by the Government over selected issues that might arise within the board of the company.

41. Mr. ESTRELLA FARIA (International Trade Law Branch) thanked delegations for pointing out the weaknesses in the text; their comments would greatly assist the secretariat in revising the final version of the document.

42. The secretariat was aware of the sequence of events and the time lapses between the granting of a concession and the establishment of a project company. It had reviewed a number of major projects in which a pre-commitment, laying down the conditions under which the project company would later be established, had been signed by the winning consortium.

43. He recalled an earlier comment that it might be useful for Governments to grant to project companies the rights, privileges and facilities that were necessary to build infrastructure and operate services. Therein lay the meaning of "legal status", as it appeared in the document. In some systems, an operator of public services enjoyed a number of rights and prerogatives in order to ensure continuity of the services granted under the concession, through the project agreement.

The meeting was suspended at 4.25 p.m. and resumed at 4.55 p.m.

Paragraphs 35-48

44. Mr. WALLACE (United States of America) said that it would be more accurate to replace the words "project company" in the text of recommendation 12 by "Government". Recommendation 14, on duration, was merely illustrative and national legislation should also contemplate other topics, such as investments, tariffs and guarantees.

45. Turning to the notes on the legislative recommendations, he said it might be useful to include after the words "not freely transferable" in the first sentence of paragraph 35 the words "other than assignment as security to lenders". The guide should also provide for host Governments to use objective criteria for withholding approval for such assignments. It might even go so far as to provide that the consent of the Government should not be unreasonably withheld or should be deemed to have been given if not denied within a period of 90 days.

46. With regard to paragraph 38, on the method for selecting a subconcessionaire, if the effect of such selection was to replace the concessionaire, then the host Government might be justified in making the award of subconcessions subject to strict criteria. If, however, a subconcession was awarded for the purpose of providing a separate ancillary service, such as restaurant services along a toll road, then the host Government would have less justification for withholding permission.

47. On the subject of security interests (para. 39), he said the project company would normally have an interest in being able to pledge to the lender all or some of the assets, property and rights that arose out of the concession and the lender might wish to use the assets or property or to exercise the rights in question. The effect of the guide's legislative provisions should therefore be to reduce the Government's ability to withhold its approval.

48. On the question of duration, it was not a good idea to limit the duration of infrastructure concessions to a maximum number of years. Instead, the field, which was a new one, should be governed by broader and more flexible provisions and host Governments allowed to decide on the duration of the concession period.

49. With regard to specific terms (para. 48), he did not believe that the guide should contemplate all of the many provisions of a project agreement, although the legislator might wish to be made aware of the types of issues that were covered by the project agreement.

50. Lastly, the draft guide did not cover the possibility of a project's collapse, an omission which could perhaps be remedied by the inclusion of a buy/sell provision.

51. Mr. RESTREPO-URIBE (Colombia) said that, even though a number of countries had found it desirable to adopt legislative provisions limiting the duration of infrastructure concessions, the duration should not be limited for subjective reasons.

52. Mr. CHOUKRI (Observer for Morocco) said that he had certain reservations about permitting a project company to use its shares as security. Shares represented fractions of the capital of a company and their value could drop to the point where they no longer constituted a guarantee for the lender.

53. Ms. GIOIA (Italy) said that she shared the concern just expressed by the Observer for Morocco. Italian legislation did not permit the use of shares as a form of security, and the inclusion of such a provision in the guide would undermine the effectiveness of its implementation in Italy.

54. Mr. LALLIOT (France) said that a concessionaire should be required to obtain the host Government's prior approval in order to avoid situations in which the responsibility to carry out a particular activity was transferred to an entity not chosen by the Government. French law was fairly flexible with regard to the duration of the concession and essentially linked duration to the nature of the contract. The current formulation in the draft guide offered a prudent balance and should therefore be retained.

55. Mr. GUISLAIN (Observer for the World Bank) said that a clear distinction should be made between a subconcession and a subcontract. The former raised the issue of the liability of the subconcessionaire, while the latter did not. On the subject of security over shares of the project company, such security was commonly required by lenders in project finance transactions and general prohibitions on its establishment might unnecessarily limit the project company's ability to raise funding for the project. The law should therefore permit the project company to create such security.

56. On the subject of duration, he said experience had shown that the duration period was always too short and always created problems, especially if the project involved heavy infrastructural works. The reference in paragraph 46 to countries which had found it desirable to adopt legislative provisions limiting the duration of infrastructure concessions to a maximum number of years should

therefore be omitted or a caveat inserted about the risk which that limitation represented.

57. Paragraph 48, on specific terms, contained a number of elements which did not belong in legislation. The Commission should give careful consideration to those elements of which legislators should be aware, but which should not necessarily take the form of legislative provisions.

58. Mr. WALLACE (United States of America) said that he fully shared the views just expressed by the Observer for the World Bank. The guide must provide for the establishment of security interests over the shares of the project company, since lenders would insist on such security as the easiest way for them to gain control of the entire operation. He agreed, however, that Governments might wish to provide for prior government approval of the establishment of such security interests. Lastly, the term "project company" in the last sentence of paragraph 44 should be replaced by "Government".

59. Mr. LAMBERTZ (Observer for Sweden) said that he too entirely endorsed the statement just made by the Observer for the World Bank.

60. Ms. FOLLIOT (France) said that the problem with liens and other security interests was the different nature of concession agreements. In the case of build-operate-transfer contracts, ownership was transferred to the public entity at the end of the concession period and it was therefore possible to establish a security interest over the shares of the project company during the construction and operation phases. Under French law, however, the public entity was the owner of the infrastructure project from the inception of the contract. That concept of public ownership therefore precluded establishing security over assets that were in the stage of construction.

61. Mr. OLIVENCIA RUIZ (Spain) said that the tone of paragraph 35, on assignment of the concession, was descriptive and should therefore be brought into line with that of recommendation 9, to which it was related and which was more prescriptive in tone.

62. In addition, the Spanish term "enfiteusis", which was used to render the English expression "leasehold interest", in paragraph 41, was archaic and should be replaced by a term such as "usufructo".

63. With regard to paragraph 45, on the question of security over shares of the project company, Spanish law prohibited a company from using its own shares as security, although shareholders were allowed to use their shares as collateral.

64. Ms. PIAGGI DE VANOSSI (Argentina) said that she supported the comment by the representative of Spain concerning the Spanish terms "enfiteusis" and "usufructo".

65. Ms. FOLLIOT (France), referring to the remarks by the representatives of Spain and Argentina concerning the word "enfiteusis" in the Spanish version of paragraph 41, said that in French "bail emphytéotique" would be quite acceptable as a term for "leasehold interest" as it had recently come back into use in the management of State-owned lands. However, the phrase "bail d'usage" in the

current French version of the paragraph was more general and perfectly satisfactory. With respect to the final sentence in paragraph 41, she said that in the French text the phrase "titre foncier des terrains tenants ou aboutissants" ("title to adjacent land") was perplexing.

66. Ms. GUREYEVA (Russian Federation) said, in relation to the point raised by the United States delegation about conditions for terminating a project, that the interests of the host Government and the concessionaire must be kept in balance.

67. Referring to comments by the Observer for Sweden, she said that issuing strict recommendations to Governments should not be the goal of the Commission; if the Commission included in its guide only those provisions that Governments must later incorporate in their law, the guide would become a strictly binding document, and that would be far from desirable.

68. Mr. ESTRELLA FARIA (International Trade Law Branch), referring to the comments made by the United States delegation on paragraph 48 said that the secretariat's main focus in drafting the paragraph had been on the extent to which legislation was relevant for the implementation of a project agreement; the idea had been not that the lawmakers should write the contract, but rather that they should focus on what should go into the contract that also required treatment in legislation.

69. The issues dealt with in the document up to paragraph 47 were ones which in the view of the secretariat typically appeared in legislation, but nevertheless there was some interplay between chapter IV of the guide and following chapters. Paragraph 48 should be looked at in conjunction with document A/CN.9/444, on the structure and contents of the guide, because it might be useful to combine some later chapters that currently stood alone into chapter IV, specifically, those including performance by the parties, default by concessionaires, default by Governments, government support and such other issues as would appear in a project agreement. Thus, the secretariat could not proceed to work on future chapters without guidance from the Commission.

ORGANIZATION OF WORK

70. The CHAIRMAN requested the Commission to give its instructions on how it wished to proceed in terms of the structure of the guide, and on the manner in which it wished to work on completing the guide.

71. Mr. KOVAR (United States of America) said that the guide needed reorganizing and refocusing around its central purpose of providing guidance to legislatures and to those who drafted legislation in the various countries contemplating the use of private financing for infrastructure projects, as the use of private financing would in some cases require changes in laws or constitutions. Where the guide tried to cover too many topics, its focus was lost.

72. As currently drafted, the legislative recommendations at the beginning of the guide's chapters were not truly effective: to provide focus and guidance, the Commission should try to draft legislative principles, not in the form of a

model law but rather in the form of sample provisions on key topics, perhaps providing a menu of options to avoid appearing overly prescriptive.

73. His delegation had no strong views on how many chapters the guide should have and how they should or should not be combined. Future chapters could possibly be successfully amalgamated with those already discussed, providing the principle of keeping the focus on the guide's purpose was kept in mind and if there was a shift of emphasis from legislative recommendations to sample provisions.

74. On the subject of working methods, his delegation believed that there was a clear need for a working group composed of representatives with expertise on the various difficult technical issues in question. The working group should work in a less formal manner than the Commission at its formal sessions. Also, the secretariat should work together with other types of experts in the preparation of documents to lay before the working group, in which task his delegation was willing to assist.

75. Mr. TELL (France) referred to his delegation's earlier remarks on the structure of the guide. The debate on the guide's structure should not be reopened because it had already shown that there were no items requiring sample provisions.

76. Concerning the method of working on the guide, he recalled that his delegation had already expressed reservations on entrusting the work in question to a formally established working group. In that connection, he noted that after completion of the Model Law on insolvency the working group on that subject had been dissolved, so there was nothing to be done on that matter. Also, the work being carried out by the Working Group on Electronic Commerce and the Working Group on International Contract Practices had been given high priority with a view to enabling them to continue developing uniform rules in their areas, and had considerable work left to do. Thus, in 1999 the Commission would face as a main task only adopting the guide because the draft convention on assignment in receivables financing would not be ready for submission. The situation was therefore rather difficult, also because there was some uncertainty as to the legal status of the working group that some wished to establish and therefore as to how long it could last in a context of budget cuts.

77. Concerning the working group's legal status, it was a moot point whether it was legally possible for the Commission to do whatever it liked in setting up working groups. When, where and how often such a working group should meet were also moot: the representative of the United States apparently had more than one meeting in mind. The French delegation might conceivably stretch to a maximum of two meetings to be held in one week, but going into long negotiations with a formally established working group would be out of the question. Even then, and assuming that a working group was established and that it carried out work which the Commission itself did not cover, the Commission would need to meet for a day or two just to approve its work, and he wondered if that was what the secretariat really wanted.

78. Given the diverse nature of the subjects dealt with in the guide, many of which involved questions of private law as well as public, and the large number of those subjects, any working group dealing with the guide would have to have its dates for meeting and its agenda properly fixed in advance so that States could ensure that the right experts were there when the issues within their purview were covered.

79. With those reservations, pending clarification from the secretariat and the provision of precise assurances to the Commission, his delegation would not oppose the establishment of a group to meet once to complete the remaining chapters in preparation for the next plenary session of the Commission.

80. Mr. LAMBERTZ (Observer for Sweden) said that he concurred with the representative of the United States in respect of the structure, contents and focus of the guide. However, it might prove difficult to draft sample provisions and the legislative recommendations should probably be retained for reasons of feasibility in the time available.

81. The Commission should take care in the guide not to duplicate the work of other organizations; he drew attention in that connection to paragraph 225 of the Commission's report on the work of its twenty-ninth session (A/51/17), which referred specifically to the guidelines being prepared by the United Nations Industrial Development Organization (UNIDO). He believed that rather than have texts in the guide similar to the guidelines, the guide should instead contain references to the guidelines. Indeed, it would be strange if there were no such references because the Commission and UNIDO should cooperate with each other and promote each other's work. The guide and the guidelines should not duplicate but rather complement each other, so that they could be used in conjunction. Also, the Commission must take care to ensure that there were no contradictions to the guidelines within the guide; he was confident that the secretariat was well aware of the guidelines and was taking care that no such contradictions arose.

82. He supported the representative of the United States also in his suggestion of establishing a working group, but that working group should have a very strict mandate and should need only one session to work on new documents prepared by the secretariat with expert assistance. When it had done its work, a further set of new documents would be similarly prepared for submission to the Commission at its thirty-second session. However difficult the task, the Commission should aim to complete the guide in 1999.

83. Mr. RENGER (Germany) observed that the chapters so far discussed needed revision and that forthcoming chapters had yet to be drafted. He believed that the current session of the Commission had dealt successfully with chapters drafted by the secretariat with the assistance of experts who had vital practical rather than academic knowledge. That same practice should continue for future chapters: establishing a working group would not on its own solve the problem, the secretariat could not draft the new chapters on its own and providing expert help for a working group would create the logistical and organizational problems mentioned by the representative of France. He wondered if a working/expert group might be convened in the first half of 1999 for a week at most, assuming there was strong support for such a method of working, to go through the new chapters drafted in the interim by the secretariat, with expert assistance.

84. Mr. LIU Yang (China) said that his delegation supported the suggestion put forward by the representative of the United States in respect of how the Commission should proceed: a working group was necessary because of the large number of issues before the Commission under the item under discussion. However, a number of issues remained to be settled before a working group could be established because the working group must have a clear goal: the Commission must decide beforehand whether the working group was to develop a model law, perhaps, or whether, as the representative of the United States appeared to suggest, it should develop a menu of provisions. Also, the rules of procedure for the group must be established. He believed that the Commission needed clarification of those issues from the secretariat before it could make an informed decision.

85. Mr. HERRMANN (Secretary of the Commission) said that for the secretariat the question in respect of working methods for developing the guide had been whether to leave the discussion to the Commission at its thirty-second session, bearing in mind that it was very probable that the Commission would have no other main topics to cover at that session, as pointed out by the representative of France. The secretariat's initial plan had been that at that session the Commission would discuss the chapters that had been revised by the secretariat in the light of the input from the current session, and most if not all of the chapters still awaiting preparation.

86. He explained that the secretariat could convene expert groups and obtain expert assistance whether or not the Commission instructed it to do so, and that the composition and other arrangements for such groups lay within the discretion of the secretariat.

87. If a working group was convened, tentatively in January 1999, the only arrangement that would make financial sense and justify travel costs would be for the group to meet for two weeks as a normal working group of the Commission. It would not be appropriate to tinker with the structure or type of meetings: all member States would be represented, and the level of formality and the language coverage could not be altered. Organizing such a working group was possible from the administrative and financial points of view, but before the Commission took a decision it should weigh up the advantages and disadvantages of organizing such a working group in the light of the degree of importance it wished to accord the project.

88. He suggested that establishing a working group would not per se indicate greater importance for the project because to keep it at the Commission level would itself be indicative of high priority. In practical terms, the workload on the secretariat would be approximately equal as the same amount of work would have to be done whether dealt with entirely at the Commission level at the next session or split between that session and an earlier working group. However, against the notion of organizing a working group was the interdependence between the chapters, meaning that the more that could be prepared together, the better, and the possibility that overall no time would be saved, given his estimation that the secretariat could draft perhaps three new chapters by the time such a working group would meet. The Commission must therefore also ask itself whether three chapters were worth a two-week session.

The meeting rose at 6.10 p.m.